



FY 15-16 PILOT PROGRAM AGREEMENT

FOR

SOLAR INCENTIVES

BETWEEN

THE CITY OF MESA

AND

COMMERCIAL CUSTOMER

(Customer address)

City of Mesa Account No. xxxxxxxx

AGREEMENT FOR SOLAR INCENTIVES
BETWEEN
THE CITY OF MESA AND COMMERCIAL CUSTOMER (FY 15-16)

This Agreement for Solar Incentives ("Incentives") is made and entered into as of the _____ of _____, 2011 ("Commencement Date"), by and between **COMMERCIAL CUSTOMER** (hereinafter "Customer"), and the **CITY OF MESA**, an Arizona municipal corporation organized and existing under the laws of the State of Arizona (hereinafter "City"). From time to time Customer and City shall be individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Customer is installing generating equipment as set forth in Exhibit A attached hereto and hereby incorporated as part of this Agreement (hereinafter called the "Distributed Generation Equipment") on a Customer owned structure at Customer's real property (Address) ("the Site");

WHEREAS, the Distributed Generation Equipment is located in the City's Energy Resources Department electric utility's ("ERD Electric Utility") distribution service area (the "Electric Service Area"), and ERD Electric Utility provides electric power and energy to Customer at the Site;

WHEREAS, Customer has executed an Interconnection Agreement with City and established interconnection with ERD Electric Utility at the Site so that the Distributed Generation Equipment may operate in parallel with ERD Electric Utility's electrical distribution system (the "System");

WHEREAS, City has authorized a temporary pilot program (the "FY 15-16 Pilot Program") for eligible customers with Distributed Generation Equipment in the Electric Service Area whereby, based on certain conditions and FY 15-16 Pilot Program parameters, City is willing to provide Customer an incentive (the "Incentive") in exchange for Customer's transfer of the ownership of all environmental attributes ("Environmental Attributes") of the Distributed Generation Equipment to the City.

NOW, THEREFORE, in consideration of the Recitals and the mutual undertakings and agreements contained in this Agreement, the Parties covenant and agree as follows:

1. **APPLICABILITY:** In order for Customer to be eligible to enter into this Agreement and receive the Incentive, Customer represents and warrants that Customer has met all of the following conditions ("Applicability") :
 - A. Customer is a current City electric utility account holder and receives service at the Site within the Electric Service Area.
 - B. None of the grounds for Refusal or Termination of Service as detailed in the Terms and Conditions for the Sale of Utilities ("Terms and Conditions of Service") exist with respect to the Customer or the Site.
 - C. Customer between June 1, 2015 and June 1, 2016 has purchased at its sole cost and expense the Distributed Generation Equipment, which has a DC rated nameplate capacity of no greater than the lesser of (i) a kilowatt ("kW") peak as shall be determined by ERD Electric Utility on a case by case basis based on Customer's historic use or, if a new Customer, projected use, or (ii) seventy-five (75) kW.

- D. Customer has submitted a completed Distributed Generator Application and Equipment Information Form (the "Application") and has modified the form, if required, to include any additional information requested by ERD Electric Utility. The completed Application, reviewed and deemed acceptable by ERD Electric Utility, is attached as Exhibit C to Customer's Interconnection Agreement;
 - E. Customer has entered into an Interconnection Agreement with the City between July 1, 2015 and June 30, 2016 and is in compliance with all Customer Obligations as set forth in the Interconnection Agreement.
 - F. Customer at its sole cost and expense has designed and installed the Distributed Generation Equipment after execution of the Interconnection Agreement and the Distributed Generation Equipment has been interconnected by the City between July 1, 2015 and June 30, 2016.
 - G. The Distributed Generation Equipment qualifies for, and Customer transfers to City all Environmental Attributes as set forth herein.
 - H. Customer is the owner/title holder of the structure and Site on with the Distributed Generation Equipment is being installed.
2. TERM: This Agreement shall become effective as of the Commencement Date and shall continue in effect for a period of twenty (20) years unless sooner terminated pursuant to Sections 5,6,7, or 14 of this Agreement.
3. INCENTIVE:
- A. The Incentive will be on a "first come, first serve" basis. Incentive will be reserved for qualified Customers based upon:
 - i. Final review and concurrence by City of Customer's Application in the form required herein and in the Interconnection Agreement; and
 - ii. Customer's written acceptance of City's notification of the amount of the expected Incentive based on all Incentive applicability criterion.
 - B. Customer may receive an Incentive which will be a one-time, single payment from the City based on the installation of qualified Distributed Generation Equipment, provided the following conditions, in the opinion of ERD Electric Utility, are satisfied:
 - i. Customer and Distributed Generation Equipment meet all Applicability requirements set forth in this Agreement and conform to and are in compliance with all requirements of the Terms and Conditions of Service;
 - ii. Customer agrees to transfer ownership of all Environmental Attributes associated with the Distributed Generation Equipment, as required in Section 3C of this Agreement to the City, and
 - iii. Sufficient funds are available in the FY 15-16 Pilot Program.

Customer agrees and acknowledges that Customer's purchase of any Distributed Generation Equipment was not made in reliance on the sale of Environmental Attributes to City in exchange for the Incentive or the availability of the Incentive.

- B. Any Incentive for which a Customer qualifies will be calculated as a maximum of twenty cents (\$0.20) per watt of the Distributed Generation Equipment's direct current ("DC") nameplate rated capacity under standard test conditions, subject to the following limitations:
 - i. Customer shall only qualify for one (1) Incentive per Site;
 - ii. The Incentive will initially be calculated based on DC nameplate rated capacity up to the lesser of (i) the kW size as permitted in accordance with Section 1C above, and

- (ii) a maximum of seventy-five (75) kW. **The Incentive will be adjusted downward to the extent City determines the orientation and/or any shading of the Distributed Generation Equipment could cause a decrease in the annual energy and Environmental Attribute production; and**
 - iii. The Incentive for which Customer qualifies will be paid to Customer within ninety (90) days of the successful interconnection and testing of the Distributed Generation Equipment in accordance with the terms of the City's interconnection agreement executed by the Customer and receipt of all applicable agreements and documentation.
- C. In exchange for the Incentive, Customer conveys to City, and City accepts from Customer all of the Environmental Attributes associated with the metered output of the Distributed Generation Equipment for a period of twenty (20) years ("Transfer Period"). The Transfer Period shall commence on the first date after payment of an Incentive on which electrical energy is produced by the Distributed Generation Equipment while the customer's electrical service is connected to City's System ("Commencement Date"). The sale price to the City shall be the Incentive and this Agreement shall serve as the bill of sale for all purposes memorializing and documenting transfer of ownership of all Environmental Attributes to City.

For purposes of this Agreement, "Environmental Attributes" means all environmental, social and non-power characteristics that are attributable to the Distributed Generation Equipment, including but not limited to, all fuel, emissions, air quality, or other environmental characteristics; all credits toward achieving local, national, or international renewable portfolio standards; renewable energy credits or certificates; green energy tags; greenhouse gas or emissions reductions, credits, offsets, allowances or benefits; actual SO₂, NO_x, CO₂, CO, carbon, VOC, mercury, and other emissions avoided; all rights to report ownership of such items to any person or entity under Section 1605(b) of the Energy Policy Act of 1992 and any successor or replacement or other laws or statutes; and any and all other green energy or other environmental benefits associated with the generation of renewable energy, regardless of how any present or future law or regulation attributes or allocates such characteristics. Environmental Attributes DO NOT INCLUDE tax benefits or any energy, capacity, reliability, or other power attributes.
- 4. **CUSTOMER REPRESENTATION AND ACKNOWLEDGMENT. Customer understands, represents, warrants and acknowledges that the City payment of the Incentive shall not be construed as confirming the availability of the Environmental Attributes and that should it later be determined that the Environmental Attributes were not available (except as a result of any actions or inactions by the City) the Incentive shall be prorated and returned to City in accordance with the provisions of Section 6 hereof. Furthermore, Customer represents and warrants that (i) the sale of Environmental Attributes to the City under this Agreement is and shall be Customer's one and only sale of the Environmental Attributes with respect to the Distributed Generation Equipment; and (ii) no third party has claimed or can claim ownership or retirement of any Environmental Attributes. In addition, Customer acknowledges that City is the owner of all Environmental Attributes associated with the Transfer Period.**
- 5. **EARLY REMOVAL OF EQUIPMENT:** In the event:
 - A. The Distributed Generation Equipment is removed or not maintained in an operational manner in accordance with the requirements of the Interconnection Agreement, or

- B. Customer is not in compliance with City's Terms and Conditions of Service at any time during the Transfer Period, or
- C. City's ownership of the Environmental Attributes is jeopardized by any action or inaction of Customer, or
- D. Customer sells the Site at which the Distributed Generation Equipment is located and/or the structure on which it is located and does not comply with the requirements of Section 7 hereof; then

Customer must reimburse City a prorated portion of the Incentive for non-delivery of Environmental Attributes. Such proration shall be calculated by subtracting the "Attributes Delivered" from the Incentive amount. Attributes Delivered are calculated by dividing the number of years of proper operation of the Distributed Generation Equipment, rounded to the nearest one-tenth (1/10th) of a year, by twenty (20) years then multiplying the result by the amount of the Incentive. Customer shall notify ERD Electric Utility in writing within thirty (30) days of (i) the removal of the Distributed Generation Equipment from the Site or (ii) the date the Distributed Generation Equipment otherwise becomes non-operational. Customer must pay City the calculated reimbursement amount within thirty (30) days of such notice.

6. **SALE OF PROPERTY - NOTICE TO SUBSEQUENT PURCHASER.** If Customer intends to sell the Site or structure upon or at which the Distributed Generation Equipment is located, at least fifteen (15) days prior to the closing of such sale, Customer must notify:
- A. ERD Electric Utility that the Site may be sold,
 - B. Any prospective purchaser that:
 - (i). the Environmental Attributes associated with the Distributed Generation Equipment are the sole property of the City and that they may not be sold to any other party, and
 - (ii). City reserves the right to disconnect electric service to the Site/buyer of the Site, and/or structure on which the Distributed Generation Equipment is located, unless and until buyer executes an Interconnection Agreement with City in the form then required or until the Distributed Generation Equipment is removed from the Site and the customer's connection to City's System is otherwise acceptable to City.

Since the Environmental Attributes are the sole property of the City for the Transfer Period and may not be sold to any other party, in the event of a sale of the Site the provisions requiring the Customer to reimburse a prorated share of the Incentive to City, as required by Section 5 of this Agreement shall apply.

7. **INTERRUPTION OF INTERCONNECTION WITH CUSTOMER:** Notwithstanding any other provisions of this Agreement, Customer's Distributed Generation Equipment will be disconnected from the System during any period in which:
- A. There may be risk of injury or loss to persons or property by reason of such connection;
 - B. A System emergency exists, as determined by ERD Electric Utility;
 - C. A System outage exists;
 - D. Customer is in breach of any of its obligations under the Interconnection Agreement.
- Any such termination of Interconnection with the Customer may result in the Distributed Generation Equipment being deemed "inoperable" by City and the provisions requiring the Customer to reimburse a prorated share of the Incentive to City as required by Section 5 of this Agreement shall apply.

8. **INDEMNIFICATION:** To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless City and ERD Electric Utility, any and all of the members of its governing bodies, its officers, agents, and employees ("City Indemnifieds") for, from, and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses, and liabilities, whether direct, indirect or consequential, related to, arising from, or in any way connected with: (a) Customer's and any third party's design, construction, installation, inspection, maintenance, testing or operation of the Distributed Generating Equipment or other equipment used in connection with the System; (b) the interconnection of the Distributed Generating Equipment with, and delivery of energy from the Distributed Generating Equipment to, City's System; or (c) the performance, or nonperformance, of Customer's obligations under this Agreement. Customer's duty to defend, indemnify and hold harmless City Indemnifieds shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses that are attributable to personal or bodily injury, sickness, disease, and death, or injury to, impairment or destruction of property caused or alleged to have been caused by any act or omission of Customer, its agents, representatives, officers, officials, subcontractors and anyone directly or indirectly employed by Customer or for whose acts Customer may be responsible. Customer's obligations under this Section shall survive the termination of this Agreement.
9. **DATA:** Customer agrees to let ERD Electric Utility monitor the output of the Distributed Generation Facility. Customer agrees that City and/or ERD Electric Utility may use any data from the Distributed Generation Facility in research activities and may publish and disseminate the data.
10. **NOTICES:**
- A. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be properly served, given or made, if delivered in person, sent by U.S. mail, postage prepaid, or if sent by overnight delivery service, addressed as follows:

<u>Hand Delivery City of Mesa:</u> City of Mesa- Energy Resources Department Attn: Energy Resources Program Manager 640 North Mesa Drive PO Box 1466 Mail Stop 5030 Mesa, AZ 85211-1466	<u>Hand Delivery Customer</u> Attn: (Name of Contact) (Customer Name) (Street Address) (City, State, Zip Code) (Phone: (xxx) xxx-xxxx, Ext. xxx) (Fax: (xxx) xxx-xxxx)
<u>U.S. Postal Service City of Mesa:</u> City of Mesa- Energy Resources Department Attn: Energy Resources Program Manager PO Box 1466 Mail Stop 5030 Mesa, AZ 85211-1466	<u>U.S. Postal Service Customer:</u> Attn: (Name of Contact) (Customer Name) (Street Address) (P.O. Box #) (City, State, Zip Code) (e-mail address)

- B. Notice may also be given by electronic mail (e-mail); provided however, that a copy of the notice must also be promptly mailed or sent by overnight delivery service to the appropriate address in the manner stated above.
- C. Either Party may change its address or the person designated to receive notification hereunder by giving notice of such change in the manner provided above.
11. **TRANSFER OF INTEREST IN AGREEMENT:** This Agreement shall inure to the benefit of, and be binding upon, any successor or assign of ERD Electric Utility and City (whether such succession or assignment is by voluntary transfer or operation of law). Customer shall not assign this Agreement or its rights or obligations hereunder without the prior written consent of City.
12. **LIABILITY AND DAMAGES:** To the fullest extent permitted by law and notwithstanding any other provision of this Agreement to the contrary, neither the City nor the respective members of its governing bodies or its officers, agents, employees, subsidiaries, or affiliates or the members of their governing bodies or their officers, agents, employees, subsidiaries, or affiliates (collectively the "Related Parties" for purposes of this Section 12) shall be liable to the Customer or its Related Parties or its successors or assigns, or their respective insurers for any incidental, indirect, consequential, punitive or other special damages whatsoever, including, without limitation, lost profits, production losses, production delays or any and all other commercial damages or losses, for performance or nonperformance of its obligations under this Agreement, even if such Party is advised of the possibility thereof, and irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of Customer, City or others), strict liability, contracts, operation of law or otherwise.
13. **NON-WAIVER:** None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing. No waiver by either Party of any one or more defaults in the performance of the provisions of this Agreement shall operate or be construed as a waiver of any other existing or future default or defaults.
14. **DEFAULT:** If Customer shall default in the performance of any of its obligations under this Agreement, City may terminate this Agreement if Customer fails to cure such default within thirty (30) days of receipt of written notice of such default from City. The foregoing shall in no way limit or restrict any right or remedy at law or in equity which would otherwise be available to the non-defaulting Party. Any such termination for cause by the City shall require Customer to return to the City the calculated, pro-rated portion of the Incentive in accordance with Section 5 hereof. Additionally, a default of a nature that threatens the safety of the System, its employees, or the public may result in the immediate disconnection of ERD Electric Utility service to the Customer.
15. **NO THIRD PARTY BENEFICIARIES:** This Agreement is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties.
16. **CONFORMANCE TO LAW AND TAXES:** Customer must conform to all applicable federal, state, county, and local laws, ordinances, codes, rules, regulations and permit requirements, including construction, zoning, operating and environmental regulations. Customer shall be solely responsible for any Customer tax liability resulting from the payment of the Incentive.

17. GOVERNING LAW AND VENUE: This Agreement shall be construed in accordance with the laws of the State of Arizona without regard to its conflict of any provisions of this Agreement. Any court action arising under this Agreement shall be initiated and prosecuted in a state or federal court in Maricopa County, Arizona.
18. SEVERABILITY OF AGREEMENT: If any provision hereof or any portion of any provision hereof shall be deemed invalid, illegal or unenforceable, such invalidity, illegality, or unenforceability, shall not alter the remaining portion of any provision, or any other provision hereof, as each provision of the Agreement shall be deemed to be severable from all other provisions hereof.
19. NOTICE: Customer is hereby notified of the following Arizona Revised Statutes to the extent applicable to contracts of the nature of this Agreement :
- A. A.R.S. § 23-214 - Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers
 - B. A.R.S. §35-392 - State treasurer and retirement system divestments; policy notices
 - C. A.R.S § 38-511 – Cancellation of political subdivision and state contracts; definition
 - D. A.R.S. § 39-121 - Inspection of public records
 - E. A.R.S. § 41-4401 – Government procurement; e-verify requirement
 - F. Arizona Constitution Article 9, 13, A.R.S. § 41-17106 – expenditures limited to budgeted purposes

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

(CUSTOMER)

By: _____

(Signature)

(Print Name)

(Title)

STATE OF ARIZONA)

)SS

County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__ by

_____ on behalf of the _____.

Notary Public

My Commission Expires:

CITY OF MESA

By: _____

Frank A. McRae

Director - Energy Resources Department

DISTRIBUTED GENERATION EQUIPMENT APPLICATION

DRAFT